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9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 NATIONAL CREDIT UNION
14 ADMINISTRATION BOARD AS
LIQUIDATOR FOR WESTERN
15 CORPORATE FEDERAL CREDIT
UNION,

16 Plaintiff,

17 v.

18 ROBERT A. SIRAVO, TODD M. LANE,
19 ROBERT J. BURRELL, THOMAS E.
SWEDBERG, TIMOTHY T. SIDLEY,
20 ROBERT H. HARVEY, JR., WILLIAM
CHENEY, GORDON DAMES, JAMES
21 P. JORDAN, TIMOTHY KRAMER,
ROBIN J. LENTZ, JOHN M. MERLO,
22 WARREN NAKAMURA, BRIAN
OSBERG, DAVID RHAMY and
23 SHARON UPDIKE,

24 Defendants.
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Case No.: CV10-01597 GW (MANx)

**JOINT REPORT RE EARLY
MEETING OF COUNSEL [Fed. R.
Civ. P. 26(f) and Local Rule 26-1]**

Scheduling Conf.: August 25, 2011
Time: 8:30 a.m.
Courtroom: 10

On August 15, 2011, the parties held their early meeting of counsel pursuant to Fed. R. Civ. P. 26(f) and Rule 26-1 of the Local Rules of the United States District Court for the Central District of California. Plaintiff National Credit Union Administration Board as Liquidator of Western Corporate Federal Credit Union (the “NCUA”) was represented by Michael H. Bierman and Jeffrey D. Wexler of Luce, Forward, Hamilton & Scripps LLP. Defendants Robert A. Siravo (“Siravo”) and Thomas E. Swedberg (“Swedberg”) were represented by Richard E. Drooyan of Munger, Tolles & Olson LLP. Defendant Todd M. Lane (“Lane”) was represented by Kenneth M. Fitzgerald and Curtis G. Carll of Chapin Fitzgerald Sullivan & Bottini LLP. Defendant Robert J. Burrell (“Burrell”) was represented by Bruce A. Ericson and Marley Degner of Pillsbury Winthrop Shaw Pittman LLP. Defendant Thomas T. Sidley (“Sidley”) was represented by Seth E. Freilich of Orrick, Herrington & Sutcliffe LLP.

I. RULE 26(f)

A. Timing, Form, or Requirements for Rule 26(a) Disclosures (Fed. R. Civ. P. 26(f)(3)(A))

In light of the answers and counterclaims filed by the defendants on August 15, 2011, the parties have agreed to make their initial disclosures on September 30, 2011. The parties anticipate that they will proceed with a substantial initial production of documents prior to service of the initial disclosures. The parties do not believe that there should be any changes in the form or requirement for the disclosures.

B. Discovery Subjects and Phases (Fed. R. Civ. P. 26(f)(3)(B))

The parties anticipate that discovery will be directed toward the allegations made in the surviving claims for relief of the Second Amended Complaint and the Answers thereto, and the Counterclaims including issues related to: (1) the concentrations of private label mortgage backed securities in WesCorp’s investment portfolio, and in particular the concentration of such securities based on pools of

1 Option ARM loans, and the role of the Defendants and WesCorp's directors in
2 creating those concentrations; (2) the amendments to the Supplemental Executive
3 Retention Plans of Siravo and Swedberg, the Lane Early Payout Agreement and the
4 role of Siravo, Swedberg and Lane and of WesCorp's directors in initiating,
5 approving and implementing the amendments and the Early Payout Agreement; (3)
6 the damages sought by the NCUA; (4) knowledge and approval by the National
7 Credit Union Administration of WesCorp's investments in private label mortgage
8 backed securities and its position on such investments generally; and (5) the
9 NCUA's obligations to indemnify defendants and advance defense costs in this case.

10 The parties propose a percipient discovery cut-off date of August 6, 2012.

11 The parties do not believe that it is necessary for the Court to enter an Order
12 requiring discovery to be conducted in phases or that discovery be limited to or
13 focused upon particular issues, except that they agree that percipient discovery
14 should be completed before expert disclosures and expert discovery. However, the
15 parties plan to coordinate their discovery efforts to ensure that discovery is
16 scheduled in an efficient manner.

17 **C. Issues re Disclosure or Discovery of Electronically Stored**
18 **Information (Fed. R. Civ. P. 26(f)(3)(C))**

19 **1. Preservation**

20 The parties have taken steps to ensure the preservation of their electronically
21 stored information pending resolution of this matter.

22 **2. Production**

23 The parties are currently negotiating an agreement governing the terms and
24 conditions of production of electronically stored information. The parties agree that
25 production of electronically stored information shall be subject to the limitations set
26 forth in Fed. R. Civ. P. 26(b)(2)(B).
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1 **D. Issues re Claims of Privilege or Work Product (Fed. R. Civ. P.**
2 **26(f)(3)(D))**

3 The parties do not propose any modification to the procedures set forth in
4 Fed. R. Civ. P. 26(b)(5) for withholding documents based upon the attorney-client
5 privilege or the work product doctrine and for identifying privileged documents that
6 have been inadvertently produced.

7 The parties anticipate that discovery may require the parties to produce
8 documents that were in the possession, custody, or control of WesCorp prior to its
9 failure and as to which WesCorp had the right to assert the attorney-client privilege
10 and/or the work product doctrine. The parties agree that pre-failure WesCorp
11 documents may be produced to either the NCUA or Defendants without waiving the
12 attorney-client privilege or the work product doctrine, given that the NCUA is the
13 successor in interest to WesCorp. Defendants will not disclose to third parties or
14 publicly file any pre-failure WesCorp document that may be subject to the attorney-
15 client privilege or the work product doctrine without the NCUA's agreement to such
16 disclosure or public filing, and, absent such agreement, they will not disclose such
17 documents to third parties and will file those documents only under seal.

18 **E. Changes or Limitations in Discovery Rules (Fed. R. Civ. P.**
19 **26(f)(3)(E))**

20 The parties agree that, in light of the number of issues presented by this
21 lawsuit and the large number of potential witnesses, the Court should lift the limit
22 set by Fed. R. Civ. P. 30(a)(2) of 10 depositions per side. The parties agree to have
23 further discussion if it appears that the limit set by Fed. R. Civ. P. 30(d)(1) of one
24 day of seven hours per deposition needs to be modified for particular deponents.
25 The parties will work together to ensure that the number of depositions are
26 reasonable in light of the issues presented by this case, and each party reserves its
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1 right to seek a protective order to limit the number of depositions in the event it
2 deems such relief appropriate.

3 **F. Other Discovery or Scheduling Orders (Fed. R. Civ. P. 26(f)(3)(F))**

4 The parties anticipate entering into a stipulated protective order governing the
5 dissemination and use of confidential information.

6 **II. LOCAL RULE 26-1**

7 **A. Complex Case (Local Rule 26-1(a))**

8 The parties agree that this case is not sufficiently complex to require use of all
9 or part of the procedures of the Manual For Complex Litigation.

10 **B. Motion Schedule (Local Rule 26-1(b))**

11 The parties anticipate filing motions for summary judgment or summary
12 adjudication on issues of liability or damages.

13 The parties propose a dispositive or partially dispositive motion filing cut-off
14 date of January 14, 2013 and a dispositive or partially dispositive motion hearing
15 cut-off date of March 4, 2013.

16 *See* Part II.G below for the overall schedule proposed by the parties.

17 **C. Settlement (Local Rule 26-1(c))**

18 While the parties are unable at this time to estimate the likelihood of
19 settlement, they intend to make their best efforts to reach a mutually agreeable
20 resolution of this matter.

21 As set forth in the Settlement Procedure Selection: Request and Notice filed
22 concurrently herewith, the parties recommend that the Court approve Settlement
23 Procedure No. 1, with the parties appearing before the magistrate judge assigned to
24 the case for such settlement proceedings as the judge may conduct or direct.

25 The parties recommend March 28, 2013 as the cut-off date for conducting
26 such settlement proceeding.

27 **D. Trial Estimate (Local Rule 26-1(d))**

28 The parties preliminarily estimate a trial lasting 20 days.

The parties propose a trial date in May 2013.

E. Additional Parties (Local Rule 26-1(e))

The parties do not anticipate that any additional parties will appear.

F. Expert Witnesses (Local Rule 26-1(f))

The parties propose an expert witness discovery cut-off date of December 7, 2012, with initial expert reports due on September 7, 2012 and rebuttal expert reports due on October 26, 2012.

G. The Parties' Proposed Schedule

The parties propose the following schedule for the Court's consideration (this includes the various dates suggested above):

Deadline	Date
Initial Disclosures	September 30, 2011
Percipient discovery cut-off	August 6, 2012
Initial expert reports due	September 10, 2012
Rebuttal expert reports due	October 26, 2012
Expert discovery cut-off	December 7, 2012
Dispositive or partially dispositive motion filing cut-off	January 14, 2013
Dispositive or partially dispositive hearing cut-off	March 4, 2013
Settlement proceeding cut-off	March 28, 2013
Trial date	May 2013

DATED: August 18, 2011

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Attorneys for Plaintiff National Credit Union
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1 DATED: August 18, 2011

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